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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

314-698

No. 750

ELISE N. MILBURN, WIFE OF WILLIAM PALMER BILES,
Petitioner,

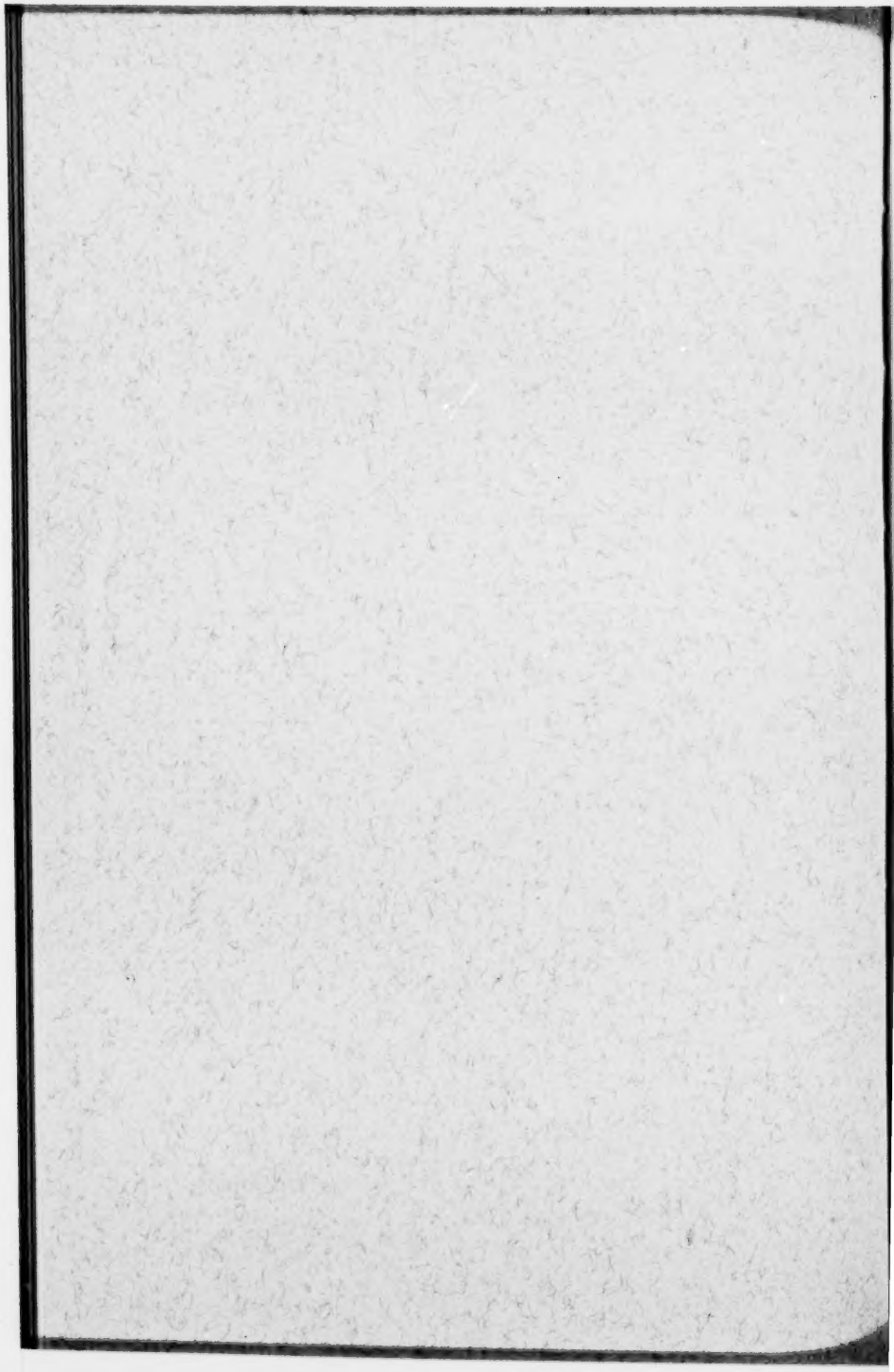
versus

PROCTOR TRUST COMPANY, ET AL.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

JOHN W. HARRELL,
Counsel for Petitioner.

JAMES W. HOPKINS,
Of Counsel.



INDEX.

Subject Index.

	Page
Petition for writ of certiorari	1
Summary statement of the matter involved	1
Jurisdictional statement	7
Questions presented	8
Reasons relied upon for allowance of the writ	8
Prayer for writ	13

Table of Cases Cited.

Aronstein v. *Irvine*, 49 La. Ann. 1478, 22 So. 405	10
Brewer v. *Yazoo and M. V. R. Company*, 128 La. 544, 54 So. 987	11
Cities Service Oil Company v. *Dunlap*, 308 U. S. 208, 60 Sup. Ct. 201, 84 L. Ed. 196	8
Destrehan v. *Louisiana Cypress Lumber Company, Ltd.*, 45 La. Ann. 920, 13 So. 230	9
Dickey v. *Pollock*, 183 So. 48	12
Dragon v. *Ansardi*, 137 So. 586	9
Erie Railroad Company v. *Tompkins*, 304 U. S. 64, 58 Sup. Ct. 817, 82 L. Ed. 1188	8
Harrod v. *Norris' Heirs*, 11 Mart. (O. S.) 297	10
Hawthorne, Succession of, 158 La. 637, 104 So. 481	10
Heroman v. *Louisiana Institute of Deaf and Dumb*, 34 Ann. 805	12
Lacroix v. *Crane*, 133 La. 227, 62 So. 657	12
Lane v. *Cameron*, 36 La. Ann. 773	10
Neda v. *Fontenot*, 2 La. Ann. 782	9
Scott's Executrix v. *Gorton's Executor*, 14 La. 115	10

Statutes Cited.

Judicial Code, Section 240 amended (28 U. S. C. A. 347)	7, 8
Louisiana Civil Code, Article 1049	6
Louisiana Civil Code, Article 1146	5, 8, 11
Louisiana Civil Code, Article 3543	5, 6, 8, 11
Louisiana Revised Statutes, Section 157	5, 8, 10, 11

Other Authority Cited.

13 Tulane Law Review, page 615	12

SUPREME COURT OF THE UNITED STATES

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ELISE N. MILBURN, WIFE OF WILLIAM PALMER BILES,
Petitioner and Appellant Below,

versus

PROCTOR TRUST COMPANY, ET AL.,
Respondents and Appellees Below.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

To the Honorable the Supreme Court of the United States:

The petition of Mrs. Elise N. Milburn, wife of William Palmer Biles, of the full age of majority and a resident of the Parish of St. Landry, Louisiana, respectfully shows:

I.

Summary Statement of the Matter Involved.

On March 31, 1939 petitioner filed in the State court this suit, a petitory action under the Louisiana law, against the Proctor Trust Company and the Sun Oil Company, wherein

she seeks to establish her ownership of an undivided one-fifteenth (1/15th) interest in lands in Avoyelles Parish, Louisiana, described as follows:

> SE¼ Section 19; W½ of SW¼ Section 20; S½ of Section 21; Lots 16, 17 and 18 of a survey of Gold Dust Plantation (being SE¼ of Section 20; E½ of SW¼ Section 20); SW¼; S½ of SE¼ Section 22; S½ of SW¼ Section 23, Township 2 South, Range 3 East.

These lands had belonged to petitioner's grandfather, the late William C. Milburn, who died intestate on February 29, 1932, or to the community which existed between him and his predeceased wife, Lise LeBlanc, who died intestate in 1899. Petitioner claims as an heir of her grandparents. Her father, James F. Milburn, died intestate on October 3, 1930, petitioner being one of five children. The heirship of petitioner is not in dispute. It is not now material to determine whether the lands were separate or community property.

Petitioner has asked to have declared a nullity the sheriff's deed to the Proctor Trust Company dated June 18, 1932 in the foreclosure of "Proctor Trust Company versus R. E. Milburn, et al." No. 8525 of the docket of the State District Court for Avoyelles Parish, and the administrator's deed to the Proctor Trust Company dated January 7, 1933 in the Succession of the late William C. Milburn, Probate No. 372 of the docket of the said State court, and further to have declared invalid an oil, gas and mineral lease dated March 5, 1934 by Proctor Trust Company to Sun Oil Company.

Petitioner's grandfather on July 1, 1925 had given a note for $8500.00 secured by mortgage on about half of the above described lands, being five hundred sixty (560) acres more or less. The Proctor Trust Company, holder of this note, instituted the foreclosure referred to above on March

16, 1932 after the death of the grandfather against his heirs including petitioner. The land subject to the mortgage was bought in at the sheriff's sale by the Proctor Trust Company. Thereafter, on August 28, 1932, the Proctor Trust Company claiming to be a creditor and acting through its representative, Guy Sherrill, purported to open the Succession of William C. Milburn. At a sale by Sherrill as administrator of the Succession on January 7, 1933, the Proctor Trust Company bought in the remaining lands, some five hundred sixty (560) acres.

The Proctor Trust Company and the Sun Oil Company removed the suit against them to the United States District Court for the Western District of Louisiana, Alexandria Division, and then filed answers.

After trial, the Federal District Judge denied petitioner's claim except as to SE¼; E½ of SW¼ Section 20 T. 2 S. R. 3 E., in which it was held that petitioner owned an interest inherited from the community half of her grandmother, as this property was purchased during the marriage of petitioner's grandparents.

On June 12, 1940, petitioner gave notice of appeal from this judgment to the United States Circuit Court of Appeals for the Fifth Circuit, and the appeal was lodged in that court on August 19, 1940. After hearing on April 2, 1941, that court on September 9, 1941 handed down a decision affirming the judgment of the lower court. Although the Appellate Court had the case under advisement for five months, a very meager opinion was given, and there is practically no discussion of the legal points at issue. Petitioner timely applied for rehearing, which was refused on October 13, 1941.

The decision of the trial court is reported in 22 Fed. Supp. 635, and that of the Appellate Court in 122 F. (2d) 569.

Petitioner acquiesces in the decisions of the trial court and the Circuit Court of Appeals against her, except insofar as the administrator's deed to the Proctor Trust Company dated January 7, 1933 in the Succession of the late William C. Milburn has been held valid. This deed covers SE¼; E½ of SW¼ Section 20; S½ of SE¼; SW¼ Section 22; S½ of SW¼ Section 23 T. 2 S. R. 3 E. Petitioner maintains that this administrator's sale is an absolute nullity under the Louisiana law, and that it should be so held.

Petitioner has alleged as a ground (with others now waived) for the nullity of the administrator's sale, the following:

> "Although the said Proctor Trust Company, through its representative, Guy Sherrill, as appears fully from the record in the purported succession proceedings, provoked the administration of the succession and undertook to administer the same, the said Proctor Trust Company pretended to purchase the said property at the said sale held on January 7th, 1933, at an auction conducted by its own representative and agent, the said Sherrill, for and on behalf of the said Proctor Trust Company, and the said Sherrill acted both as auctioneer and as purchaser for the said Proctor Trust Company; and the said sale is and was an absolute nullity under Article 1146 of the Louisiana Civil Code and Revised Statutes Section 157 (Dart's Louisiana General Statutes, Section 500)."

The Proctor Trust Company alleged in answer to this ground as follows:

> "Defendant admits that it provoked the administration proceedings, that Guy Sherrill was duly appointed administrator and that he thereafter administered the lands as an officer of the Court.
>
> "Except as admitted the allegations of this sub-paragraph are denied. Further answering defendant shows that it purchased the lands of the succession at the ad-

ministrator's sale on January 7, 1933, through and by virtue of a bid of Five Hundred & No/100 ($500.00) Dollars, made by its attorney, Camden K. Staples. That said sale was and is a valid sale made under a proper order of Court, and said sale was confirmed by a judgment of the Court."

Its co-defendant, the Sun Oil Company, answered substantially the same.

The two defendants further pleaded prescription curing informalities in public sales under Article 3543 of the Louisiana Civil Code.

Article 1146 of the Louisiana Civil Code, on which petitioner relies, reads as follows:

"1146 (1139). PURCHASE OF SUCCESSION PROPERTY BY LEGAL REPRESENTATIVE PROHIBITED—EXCEPTIONS.—Every curator of vacant succession or of absent heirs is prohibited from purchasing by himself, or by means of a third person, any property, movable or immovable, entrusted to his administration, under the pain of nullity and responsibility for all damages caused thereby.

"Any executor, administrator, curator of vacant succession, or tutor, may purchase at the sale of the effects of the deceased, whose estate he may represent, when he is the surviving partner in the community or ordinary partnership, or an heir or legatee of the deceased or any mortgaged property when he is the mortgage creditor, or any property encumbered with a vendor's lien when he has a claim secured by such vendor's lien; and all purchases so made shall be considered as valid and binding as though made by any disinterested third party, and shall have full force against minors, interdicted persons, and married women. (As amended, Acts 1912, No. 197.)"

Section 157 of the Louisiana Revised Statutes, also relied upon, reads:

"It shall not be lawful for any person acting as auctioneer to purchase, either directly or indirectly, any

> property at a sale made by him, and any such sale shall be null and void."

An administrator of a Louisiana succession has the same powers and is subject to the same duties and responsibilities as a curator of a vacant estate insofar as the matters now under discussion are concerned. Article 1049 of the Louisiana Civil Code reads:

> "The administrators thus chosen have the same powers and are subject to the same duties and responsibilities as the curators of vacant estates, under the modifications hereafter made."

Article 3543 of the Louisiana Civil Code, pleaded by defendants as a basis for prescription, provides:

> "Any and all informalities of legal procedure connected with or growing out of any sale at public auction of real or personal property made by any sheriff of the parishes of this State, licensed auctioneer, or other persons, authorized by an order of the courts of this State, to sell at public auction, shall be prescribed against by those claiming under such sale after the lapse of two years from the time of making said sale, except where minors or interdicted persons were part owners at the time of making it, and in the event of such part ownership by said minors or interdicted persons, the prescription thereon shall accrue after five years from the date of public adjudication thereof."

The evidence offered at the trial by petitioner establishes that on August 28, 1932, the Proctor Trust Company filed a petition in the State District Court for the Parish of Avoyelles to open the Succession of William C. Milburn and have the succession administered. The Proctor Trust Company asked that Sherrill be named as administrator of the succession. The affidavit on the petition was executed by Sherrill who swore that "he is the duly authorized representative of the Proctor Trust Company." Sherrill was